

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 05-20740-CR-UNGARO-BENAGES

UNITED STATES OF AMERICA

v.

FADILUR, S.A.,

Defendant.

_____ /

PLEA AGREEMENT

The United States Attorney's Office for the Southern District of Florida and the Environmental Crimes Section of the United States Department of Justice (collectively the "United States" or the "Government") enter into the following plea agreement with FADILUR, S.A. ("Defendant" or "Fadilur"), pursuant to Rule 11(c)(1)(A) and (B) of the Federal Rules of Criminal Procedure.

I. Guilty Plea

A. The Charges

On such date as the Court may determine, Fadilur shall plead guilty in the Southern District of Florida to all Counts of the pending criminal Indictment, which charge Fadilur with False Labeling (Count 1) in violation of 16 U.S.C. §§ 3372(d), 3373(d)(3)(A)(I) and 18 U.S.C. § 2; Importing of Illegally Possessed Fish (Count 2) in violation of 16 U.S.C. §§ 3372(a)(1), 3373(d)(1)(A) and 18 U.S.C. § 2; Attempted Sale of Illegally Possessed Fish (Count 3) in violation

of 16 U.S.C. §§ 3372(a)(1), (a)(4), 3373(d)(1)(B) and 18 U.S.C. § 2; Obstruction of Justice (Count 4) in violation of 18 U.S.C. §§ 1519 and 2; and a Criminal Forfeiture charge related to a quantity of toothfish and/or the proceeds of the sale thereof.

II. Sentencing Guidelines and Penalties

A. Sentencing Guidelines

The Parties agree and understand that, because the crimes charged occurred after November 1, 1991, the United States Sentencing Guidelines relating to the sentencing of organizations (Chapter Eight) apply here, except to the extent that the provisions relating to the calculation and imposition of fines for wildlife crimes do not apply to the offenses charged in the Criminal Indictment.

B. Penalties

The Parties agree that the statutory maximum amount of the fines to be imposed for each of the felony offenses (Counts 1 - 4) is \$500,000.00, 18 U.S.C. § 3571(c)(3), or twice the gross pecuniary gain derived from the crimes or twice the gross pecuniary loss caused to the victims of the crimes, whichever is greater, 18 U.S.C. § 3571(d), and that the sentence may include a term of probation of at least one year but not more than five years. In addition, Fadilur understands that the Court may order restitution to any identifiable victims of the crimes pursuant to 18 U.S.C. §§ 3663 and 3664, and must order the Defendant to pay a \$400.00 mandatory special assessment for each of the offenses, 18 U.S.C. § 3013, which the Defendant agrees to pay on the day of sentencing.

III. Corporate Authorization

Fadilur will provide to the United States written evidence in the form of a notarized legal document certifying that Defendant is authorized to plead guilty to the felony charges and criminal forfeiture as set forth in the Indictment, and to enter into and comply with all provisions of this Agreement. The notarized document shall further certify that a designated Officer or Director of Fadilur is authorized to take these actions and that all corporate formalities required by the laws of Uruguay applicable in such instance, including, but not limited to, approval by Defendant's directors, have been observed. Defendant agrees that the designated Officer or Director of Fadilur shall appear on behalf of Defendant to enter the guilty plea in the Southern District of Florida and shall also appear for imposition of the sentence in the Southern District of Florida.

IV. Sentence Recommendation

In accordance with Federal Rule of Criminal Procedure 11(c)(1)(A) and (B), the United States and Fadilur recommend that the following sentence is appropriate and should be imposed in this case.

A. Fine

A criminal fine in a total amount of \$100,000.00, which shall be paid contemporaneous with the imposition of sentence pursuant to this agreement. The parties further agree that the criminal fine should be imposed pursuant to Counts 1, 2, and 3 and thus be payable to the Magnuson-Stevens Fishery Conservation and Management Act Fund, to be applied in part to meet the expenses incurred in the seizure, maintenance, and disposal of the eleven cargo containers of toothfish seized in connection with the events underlying the Indictment.

B. Probation

A period of probation of four years, which shall include the following special conditions of probation:

1. No Further Violations: Defendant agrees that it shall commit no further violations of federal, state or local law, including smuggling, wildlife, and federal food safety laws and regulations, as well as those laws and regulations during the period of its remaining corporate existence.

2. Special Assessments: Defendant agrees to pay the \$1,600.00 mandatory special assessment on the day of sentencing.

3. Termination of Corporate Existence: Defendant shall cease all business activities and operations, and liquidate and dissolve within 45 days of the imposition of sentence in this case. Proof of dissolution of the corporation shall be furnished to the Court's Probation Officer and counsel representing the United States in this matter within sixty (60) days of the entry of the Judgment & Commitment Order.

V. Additional Liability

Provided that the Defendant complies fully with the terms of this agreement, the United States agrees to forgo additional criminal prosecution in the Southern District of Florida, the Central District of California, the Eastern District of New York, and the District of Massachusetts against the Defendant, for any charges in addition to the charges set forth in the Indictment, for any crimes arising out of or relating to that investigation, and that are known to the government at the time of the signing of this agreement. The parties further understand that this agreement only applies to federal criminal charges and only to the Defendant. Defendant understands and agrees that neither

this paragraph nor this agreement limits the authority of any sections or divisions of the Department of Justice, including the U.S. Attorneys of other judicial districts except as provided herein, or any other federal, state, or local regulatory or prosecuting authorities. Although undersigned counsel is unaware of any other criminal investigations or administrative inquiries, this agreement does not provide or promise any waiver of any civil or administrative actions, sanctions, or penalties that may apply, including but not limited to: fines, penalties, claims for damages of natural resources, suspension, debarment, listing, licensing, injunctive relief, or required remedial action to comply with any applicable regulatory requirement. In the event any enforcement agency or authority institutes such an action after the acceptance of this agreement by the Court, government counsel will bring this agreement to the attention of that entity.

VI. Forfeiture

Defendant, and its owners and agents agree, contemporaneous with the imposition of sentence pursuant to this agreement by the Court, to withdraw any and all right, title, interest, or claim to any toothfish, the value of toothfish seized by the United States, or the proceeds from the sale of the toothfish seized by the United States, as well as any and all claims against the United States, the Department of Commerce, the National Oceanic & Atmospheric Administration and its subordinate agencies, the Department of Homeland Security and its subordinate agencies, and the agents and employees of the foregoing federal Departments. Specifically, Defendant agrees to withdraw with prejudice any and all claims in the following civil cases: *United States of America v. Three Hundred And Fourteen Thousand Three Hundred And Ninety-Seven Dollars And Thirty Cents (\$314,397.30) Representing Proceeds From The Sale Of Toothfish (Dissostichus Spp.) And Approximately Five (5) Pounds Of Toothfish (Dissostichus Spp.)*, Case No. 05-20566-CIV-

Moore/O'Sullivan [S.D. FL]; *United States of America v. One Million Nine Hundred And Twenty Thousand Seven Hundred And Thirty-Five Dollars And Thirty-Three Cents (\$1,920,735.33) Representing Proceeds From Sale Of Toothfish (Dissostichus Spp.) And Approximately Thirty-Eight (38) Pounds Of Toothfish (Dissostichus Spp.)*, Civil Action No. 05-1238 (ILG)(KAM) [E.D. NY]; *United States of America v. One Hundred Sixty-One Thousand Nine Hundred Thirty-Five Pounds, More or Less, Of Toothfish (Dissostichus Spp.)*, Case No. 05-1539 RSWL (Mcx) [C.D. CA]. Defendant commits to undertake all actions within its power to assist in the forfeiture and transfer to the United States of any right, title, or interest it, or any entity in which it has an interest, has with respect to the funds and toothfish at issue in the foregoing cases.

VII. Express Waiver of Right to Appeal Guilty Plea and Sentence

Fadilur agrees to enter an unconditional plea of guilty to the criminal Indictment. As a result of entering the guilty plea, Defendant expressly waives all defenses or objections to the criminal Indictment and reserves no future defenses or rights to appeal any decisions of the Courts. Defendant further expressly agrees to waive all constitutional, statutory, common law, jurisdictional, and non-jurisdictional defects in the proceedings and/or defenses to the criminal Indictment, including, but not limited to, any and all pretrial motions, post-trial motions, post-sentencing motions, defenses, objections, or collateral attacks. In sum, Defendant expressly waives any and all appellate review, whether direct or indirect, with regard to the criminal Indictment.

Defendant is additionally aware that Title 18, United States Code, Section 3742 normally affords a Defendant the right to appeal the sentence imposed. Acknowledging this, in exchange for the concessions and considerations by the United States contained herein, Defendant hereby waives all rights conferred by Title 18, United States Code, Section 3742 to appeal any sentence imposed,

any restitution order, any order of forfeiture, or to appeal the manner in which the sentence was imposed. The Defendant further understands that nothing in this agreement shall affect the Government's right and/or duty to appeal as set forth in 18 U.S.C. Section 3742(b). However, if the United States appeals the defendant's sentence pursuant to Section 3742(b), the defendant shall be released from the above waiver of appellate rights. By signing this agreement, the Defendant acknowledges that it has discussed fully with its defense counsel this plea agreement and its consequences, including the various waivers set forth herein, and that Defendant understands the nature and consequences of the plea agreement including the various waivers set forth herein. Defendant further agrees, together with the United States, to request that the Court enter a specific finding that the Defendant's entry into this plea agreement, including the various waivers set forth herein, is both knowing and voluntary.

The United States and Defendant also agree not to make any public statements regarding these matters or this agreement prior to the time that the United States files this plea agreement in U.S. District Court for the Southern District of Florida.

VIII. Binding Final Agreement

None of the terms of this agreement shall be binding on the United States until this agreement is signed by the Defendant and defense counsel, and until signed by the United States Attorney for the Southern District of Florida and by the Assistant Attorney General of the Environment and Natural Resources Division, or their designees, and filed in Court. The parties agree that this plea agreement is the only agreement between the United States and Defendant concerning this matter, supersedes all prior understandings, if any, whether written or oral, and cannot be modified other than in a writing that is signed by all parties. No other promises or

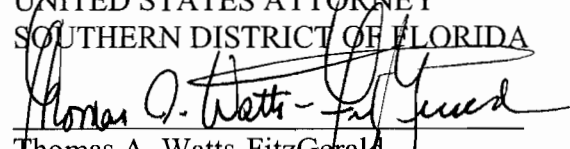
inducements have been or will be made to the Defendant in connection with this case, nor have any predictions or threats been made in connection with this plea.

RESPECTFULLY SUBMITTED,

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF FLORIDA

Date: 11/13/06

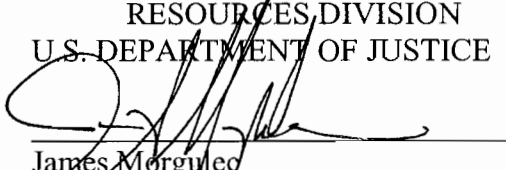
BY:


Thomas A. Watts-FitzGerald
Assistant U.S. Attorney

SUE ELLEN WOOLDRIDGE
ASSISTANT ATTORNEY GENERAL
ENVIRONMENT & NATURAL
RESOURCES DIVISION
U.S. DEPARTMENT OF JUSTICE

Date: 11/13/06

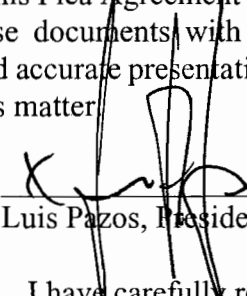
BY:


James Morgulec
Senior Counsel
Environmental Crimes Section

FOR FADILUR, S.A.:

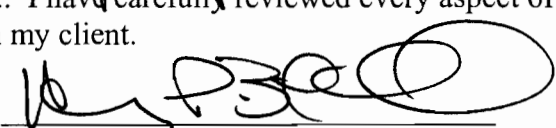
I am the President of FADILUR, S.A., empowered by corporate resolution to bind FADILUR, S.A. in this matter. I have read this Plea Agreement and the Criminal Indictment, and have carefully reviewed every part of these documents with counsel for FADILUR, S.A.. I voluntarily agree that they comprise a fair and accurate presentation of the facts and the basis upon which FADILUR, S.A. wishes to resolve this matter.

11/13/06
Date


Luis Pazos, President

I am the attorney for FADILUR, S.A.. I have carefully reviewed every aspect of this Plea Agreement and the Criminal Indictment with my client.

11/13/06
Date


Henry P. Bell, Esquire
Attorney for Defendant FADILUR, S.A.